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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,250	09/23/2005	Felix Frey	FREY, F. ET AL - 1 PCT	1882
25889	7590	10/02/2008	EXAMINER	
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			KO, JASON Y	
		ART UNIT	PAPER NUMBER	
		4132		
		MAIL DATE	DELIVERY MODE	
		10/02/2008	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/550,250	FREY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JASON Y. KO	4132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 10-19 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 10-19 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 23 September 2005 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20050923, 20070723</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Specification***

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.
2. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.
3. The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.
4. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **Arrangement of the Specification**

5. As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:
  - (a) TITLE OF THE INVENTION.
  - (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
  - (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
  - (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
  - (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
  - (f) BACKGROUND OF THE INVENTION.
    - (1) Field of the Invention.
    - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
  - (g) BRIEF SUMMARY OF THE INVENTION.
  - (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
  - (i) DETAILED DESCRIPTION OF THE INVENTION.
  - (j) CLAIM OR CLAIMS (commencing on a separate sheet).
  - (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(I) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A “Sequence Listing” is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required “Sequence Listing” is not submitted as an electronic document on compact disc).

***Drawings***

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “1” has been used to designate both “testing means” and “testing material” particularly on page 13. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: particles 34. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top

margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

8. Claim 10 is objected to because of the following informalities: The claim sets forth a plurality of elements but these elements are not separated by a line indentation. Appropriate correction is required. See MPEP 608.01(m); 37 C.F.R. 1.75(i).

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:
- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
10. Claims 13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
11. Regarding Claims 13-14, applicant claims particles arranged on an article as “designed in a single piece” It is unclear what constitutes being “designed” in a single piece when two distinct elements are to be provided.

***Claim Rejections - 35 USC § 102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**13. Claims 10-11 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by SCHELLENBERGER ET AL., WO 99/34011.**

14. Claim 10 is directed towards a testing device to ascertain the quality of a washing, cleaning and/or drying operation, comprising an article and particles arranged on the article in a defined density, said particles being detachable from the article by physical and/or chemical exposure.

15. As to Claims 10 and 16, SCHELLENBERGER ET AL. discloses an article such as cotton (page 1, line 32) with particles (stain) arranged on the cotton, which is capable of being used as a testing device, because the particles are removable by a washing and/or cleaning operation. The particles (stain) are detachable (removable) from the cotton by chemical exposure. The density of the stains is deemed to be defined, in order to measure the degree of removal. See page 1 line 32 – page 2 line 6. Claim 16 is directed to the testing device of Claim 10, wherein the particles have defined sizes of at least one of the following substances: egg white, blood, ketchup or other foodstuffs. As to Claim 16, SCHELLENBERGER ET AL. teaches that the particles (stain) can include egg and blood. Page 1 line 33.

16. As to Claim 11, SCHELLENBERGER ET AL. teaches an example of carrier elements onto which the particles are applied. One example is hydrogen peroxide (carrier element) for fixing a BMI stain (particles) to cotton (article). Page 4 lines 9-10.

The hydrogen peroxide is capable of being applied to the BMI stain and then applied to the cotton. See page 4 lines 9-10.

**17. Claims 10-14 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by BORNSTEIN, U.S. Patent No. 1,606,920.**

18. As to Claim 10, BORNSTEIN discloses an article which is capable of being used as a testing device (shirt, Fig. 1), with particles (buttons 7, Fig. 1), in a defined density (the number of buttons is finite), with the particles being detachable by physical exposure (they can be removed by mechanical force, col. 2 lines 54-55). Particles as claimed in the claim have been construed to include larger entities such as a button, because the specification and other claims refer to the particles as taking the form of egg white, blood, ketchup etc. Particles as claimed in the claim has been construed to include larger entities such as a button, because the specification and other claims refer to the particles as taking the form of egg white, blood, ketchup etc.

19. As to Claim 11, BORNSTEIN further discloses a carrier element (the portion of the shirt having button holes 4) onto which the particles (buttons) are applied, and said carrier element is being connected to the article (the portion of the shirt having button holes 4 are connected to the portion of the shirt having buttons).

20. As to Claim 12, BORNSTEIN also discloses that the particles are applied (buttons 7 are inserted) by means of a connection agent (into pockets 5) to the carrier element (the portion of the shirt having button holes 4, through button holes 4). See lines 45-51.

21. As to Claim 13, BORNSTEIN discloses that the particles and the article are designed in a single piece. Buttons (particles) are sewn onto the front of a shirt (article), which renders the design of the particles and the article to a single piece. See lines 4-9.

22. As to Claim 14, BORNSTEIN discloses an intended-breakage point provided between each particle and the article. The buttons (each particle) can become detached from the shirt (article), thereby providing an intended-breakage point, between the particle and the article (lines 5-9 and 54-55).

23. As to Claim 19, BORNSTEIN further discloses a carrier element (the portion of the shirt having button holes 4) that is freely formable and is adapted to be cured in a selected shape (a shape missing a central portion as in a button hole) in order to form a three-dimensional structure. See Figs. 1-3.

**24. Claims 10 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by RUCKER, U.S. Patent No. 5,603,143.**

25. As to Claim 10, RUCKER discloses a testing device (garment 21) which could be used to ascertain the quality of a washing, cleaning, and/or drying operation. Furthermore, there is a button (particle) arranged on the garment (article) that is detachable from the garment (article) by physical exposure (mechanical force). See Figs. 1 and 3 and col. lines 45-54. More specifically, the backing patch 26, which the button is on can be torn away manually. See Figs. 1 and 3 and col. lines 45-54. Particles as claimed in the claim have been construed to include larger entities such as a button, because the specification and other claims refer to the particles as taking the form of egg white, blood, ketchup etc.

26. As to Claim 15, RUCKER discloses buttons (particles) consisting of plastic. The garment buttons (particles) include plastic buttons that can undergo breakage. See Col. 1, lines 14-21.

**27. Claims 10-12 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by JOHNSON ET AL., U.S. Patent No. 6,042,678.**

28. As to Claim 10, JOHNSON ET AL. discloses particles (dispersed pigments as part of color coat 16, Figs. 1-5 and col. 10 lines 39-42) that could be arranged on the article (exterior of an automotive, abstract). The coating is capable of being used as a testing device to ascertain the quality of a washing, cleaning and/or drying operation because the exterior undergoes these operations in the course of a car wash and rainy or sunny weather. Particles as claimed in the claim have been construed to include heterogeneous mixtures of particles such as dispersed pigments contained in a chlorinated polymer (abstract), because the specification and other claims refer to the particles as taking the form of egg white, blood, ketchup etc. Furthermore, the particles are in a defined density because they are uniformly dispersed (col. 10 lines 39-42 and col. 27 lines 23-28) and can be detached from the automotive exterior by physical and/or chemical exposure. JOHNSON ET AL. teaches that the film layer (which includes the pigments, abstract) must be repositionable, or removable by physical exposure. Col. 2 line 42. Further, particles are removable by chemical exposure, because the paint coat or color coat layer (which includes the dispersed pigments) can deteriorate from exposure to chemicals and to the weather. Col. 2 lines 51-54.

29. As to Claim 11, JOHNSON ET AL. discloses a carrier element (20) to which the particles (color coat 16, Figs. 1-5) are applied, said carrier element being connected to the article. The carrier element 20 is connected to the article when applied. See Figs. 1-5 and abstract.

30. As to Claim 12, JOHNSON ET AL. discloses the particles (color coat 16) applied by means of a connection agent (adhesive 18) to the carrier element (20). See Fig. 1.

31. As to Claims 17-18, JOHNSON ET AL. further discloses the particles (color coat 16) covered on one side with a carrier (10) and covered on the other side with a carrier film (20), which is detachable from the particles (color coat 16, "removable backing sheets" in Abstract). JOHNSON ET AL. also discloses an adhesive (18) for attachment to the article, said adhesive being disposed on the side covered by the carrier film (20). See Fig. 1 and abstract.

### ***Claim Rejections - 35 USC § 103***

32. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

33. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

34. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**35. Claim 16 rejected under 35 U.S.C. 103(a) as being unpatentable over SCHELLENBERGER ET AL., WO 99/34011, in view of ARIF, U.S. Patent No. 6,028,046.**

36. SCHELLENBERGER ET AL. discloses an article such as cotton (page 1 line 32) with particles (stain) arranged on the cotton, which could be used as a testing device. The particles (stain) are detachable (removable) from the cotton by chemical exposure. The density of the particles (stains) is defined, in order to measure the degree of removal. See page 1 line 32 – page 2 line 6.

37. Claim 16 is directed to the testing device of Claim 10, wherein the particles have defined sizes of at least one the following substances: egg white, blood, ketchup or other foodstuffs.

38. As to Claim 16, SCHELLENBERGER ET AL. teaches that the particles (stain) can include egg and blood. However, SCHELLENBERGER ET AL. does not explicitly disclose the removal of ketchup stains.

39. ARIF teaches detergents useful in cleaning fabrics for stain removal, including ketchup stains. Col. 7 lines 42-46 and col. 9 lines 35-46.

40. It would have been obvious to one of ordinary skill in the art at the time of the invention, in testing the quality of a cleaning operation or removal of stains as taught by SCHELLENBERGER ET AL., and to modify and to include the stains removed to include ketchup stains as taught by ARIF for a more expansive testing of cleaning operations.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON Y. KO whose telephone number is 571-270-7451. The examiner can normally be reached on Monday-Thursday; 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL LAVILLA can be reached on 571-272-1539. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYK/  
10/1/08

/Alicia Chevalier/  
Primary Examiner, Art Unit 1794